(Testimony of Henry Eugene Berman.)

Mr. Pratt: That is right.

Mr. Faulkner: I do not think I produced them in that form, Mr. Pratt. I think you asked me for all records of War Shipping Sales, and I produced them all.

Mr. Pratt: These are among the papers that were produced.

Mr. Faulkner: That is what I meant. In other words, what I produced, your Honor, was Nye & Nissen City Sales and Nye & Nissen. These have been selected. [3734]

Mr. Pratt: That is right.

Mr. Faulkner: That is all right.

Mr. Pratt: Q. And these are hand tags from which the invoices were drafted to the United States War Shipping Administration for delivery of various articles on boats in the harbor here, is that right?

A. The typewritten invoices are always drafted from some rough hand tag.

Q. The request was that there be produced the invoices or the representation of invoices relating to Cheddar cheese, and I am particularly directing your attention to such of these invoices as show Cheddar loaf cheese. Does the first of those indicate Cheddar loaf cheese? A. Yes, it does.

Q. In what quantity? A. 3 cases.

Q. At what weight?

A. 90 pounds net weight.

Q. Will you go through and give the amount, the number of cases of Cheddar Loaf cheese, with

(Testimony of Henry Eugene Berman.)

the number of pounds, charged to the War Shipping Administration, as you go through them?

A. 22 cases of loaf cheese, 660 pounds; 3 cases of Cheddar cheese, 90 pounds—this is all loaf, Mr. Pratt—1 case of Cheddar loaf, cheese, 30 pounds; 3 cases of Cheddar loaf cheese, 90 pounds; 1 case of Cheddar loaf cheese, 30 pounds; none on this, none on that; 3 cases of Cheddar loaf cheese, 90 pounds; 5 cases of Cheddar loaf cheese, 150 pounds; 5 cases of Cheddar loaf Cheese, 150 pounds; no loaf cheese, no loaf cheese, 2 cases of Cheddar loaf, 60 pounds; 1 case Cheddar loaf, 30 pounds; [3735] no loaf cheese, no loaf cheese, no loaf cheese, no loaf cheese, no loaf cheese, 3 cases of Cheddar loaf, 90 pounds; no loaf cheese; 1 case of Cheddar loaf, 30 pounds; 1 case of Cheddar loaf, 30 pounds; no loaf cheese, no loaf cheese, no loaf cheese, no loaf cheese, no loaf cheese, none, none here, none here; 1 case, 30 pounds; none there, none there; 5 cases of loaf cheese, 160 pounds; none there, and 1 case, 30 pounds.

Mr. Pratt: These are offered in evidence and I suggest that they be marked 177-B.

Mr. Faulkner: We object to them as incompetent, irrelevant and immaterial, and not proper cross examination.

The Court: Let them be admitted and marked. The objection is overruled.

(The documents were marked U. S. Exhibit 177-B in evidence.)

Mr. Pratt: Q. I direct your attention to Ex-

(Testimony of Henry Eugene Berman.)

hibit CT in evidence, which is a photostatic copy of one of your hand tags. Is that in your handwriting? A. Yes, it is.

Q. Does that have some Cheddar Loaf cheese?

A. Yes, it does. One case at 30 pounds.

Q. What steamer?

A. Mission San Diego. I don't know whether it was in the group, or not.

Q. The hand tags which you have previously identified, which are marked 177-B, each of those indicates shipment to one of the ships of the War Shipping Administration, does it not?

A. They are all to ships of the War Shipping Administration, [3736] yes, sir.

Q. I show you now Exhibit No. 153. I think perhaps this is not included in the hand tag that you identified.

A. This is one that I just identified.

Q. It is?

A. Yes, Mission San Diego. It is one and the same. One is the hand tag, the other is the typewritten invoice.

Mr. Pratt: That is all.

The Court: Will we be able to conclude with this witness?

Mr. Sullivan: I doubt it very much, your Honor.

The Court: I will excuse the jury. Return tomorrow morning at 10:00 o'clock.

(An adjournment was thereupon taken until tomorrow, Friday, March 29, 1946, at 10:00 o'clock a.m.) [3737]

Friday, March 29, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

Mr. Sullivan: Ready.

The Court: You may proceed.

HENRY E. BERMAN,

recalled.

Mr. Sullivan: Have you finished, Mr. Pratt, with Mr. Berman?

Mr. Pratt: Yes.

Further Redirect Examination

Mr. Sullivan: Q. Mr. Berman, during the course of the cross examination of you by Mr. Pratt I believe he made a request of you to produce certain invoices from your department of City Sales to the War Shipping Administration agents for a period beginning with, I think it was April 1, 1944, and ending with May 15, 1944. Do you remember that request? A. Yes, I do.

Q. At the same time he requested that you produce certain invoices from Nye & Nissen to your department, City Sales, covering Cheddar cheese for the same period. Do you remember that request? A. That is correct, Mr. Sullivan.

Q. I believe that yesterday Mr. Pratt directed your attention [3739] to the first classification of invoices that I have mentioned, namely, the invoices from your department to War Shipping Administration, did he not? A. Yes, he did.

Q. And your attention was directed by Mr.

(Testimony of Henry Eugene Berman.)

Pratt to Cheddar loaf cheese on those invoices for the period from April 1 to May 15

A. Approximately six weeks.

Q. And if I remember correctly your testimony or reading of certain invoices that the readings made by you of Cheddar Loaf cheese showed that the weights were around 30 pounds.

A. I believe they were 30 pounds even.

Q. You heard Mr. Pratt ask Mr. Goddard during the course of Mr. Goddard's cross examination to read the second classification of invoices and those items particularly that dealt with Cheddar loaf cheese? A. That is correct.

Q. Now, Mr. Berman, was Mr. Nystrom working for you during the period of time covered by the invoices upon which Mr. Pratt directed questions about the Cheddar loaf cheese?

A. Yes, he was.

Q. That was from April 1 to May 15?

A. I think Mr. Nystrom's employment terminated about the 13th of May.

Q. Was your method of billing the Cheddar loaf cheese orders the same as you told us on your direct examination?

A. Yes, it was the method we had described.

Q. Before April 1 did you have any different method of billing the Cheddar cheese order?

A. Yes, but that has been [3740] also described, that method?

Q. Have you made an examination of the files of Nye & Nissen for the six weeks period immediately

(Testimony of Henry Eugene Berman.)

preceding the six weeks period that Mr. Pratt wanted with reference to obtaining invoices of your sales of Cheddar cheese and particularly Cheddar loaf cheese to the War Shipping Administration?

A. Yes, I have.

Q. Directing your attention now, Mr. Berman, to the period from February 15 to April 1, that is the six weeks before Mr. Pratt's six weeks, I will show you here a group of handwritten invoices of Nye & Nissen, City Sales, which have been commonly called the yellow hand tags here in court, and I will ask you if you can identify those?

A. Yes. These are the ones.

Q. Are all of those invoices in that group that I have just handed you in your handwriting?

A. Yes, they all are.

Q. Are they to War Shipping Administration agents? A. Yes, they are.

Q. Were they all made in the regular course of business by you? A. They were.

Q. And are they part of the permanent records of your company? A. They were.

Mr. Sullivan: I will show you, Mr. Pratt, these invoices which I am going to offer in evidence.

Q. Now, Mr. Berman, just let me put to you this additional [3741] question. Did you go through your files with respect to this period in an endeavor to find the invoices pertaining to sales of Cheddar loaf cheese, that is, from February 15, 1944, to April 1, 1944? A. Yes, that was the purpose.

Q. Is it your testimony that these constitute the

(Testimony of Henry Eugene Berman.)

available invoices that you have been able to find on those items?

A. I scoured the files thoroughly and I don't believe I have missed any.

Mr. Sullivan: I will offer these in evidence and ask that they be marked a Defendants' Exhibit.

The Court: They will be admitted and marked.

(The yellow hand tags were marked Defendants' Exhibit DW in evidence.)

Mr. Sullivan: I might say, Mr. Pratt, you have a list that has been prepared by the FBI of our invoices and if you on checking find that any item of Cheddar cheese has been omitted we will be very glad to ~~make a research~~ of our files.

Q. I am going to ask you to take these invoices which are Defendants' Exhibit DW in evidence, Mr. Berman, and to go through them and to read for me the weights of the Cheddar cheese that appear on those invoices for that period. Start with the first document.

A. Do you want the day and the name of the shipping company?

Q. No, that is not necessary. Just give us the date. A. 3/2—that is March—— [3742]

Mr. Faulkner: It might be helpful to you to give the date.

Mr. Hippeli: If we can have the date at which you start and the number with which you start, the number of the invoice, that will be a 1900 number.

The Witness: The first invoice is 2715——

(Testimony of Henry Eugene Berman.)

Mr. Hippeli: Our records conform to this stamped number.

Mr. Sullivan: You are asking about a small stamped number on the righthand side of the invoice immediately below the date. Will you read that number?

The Witness: Yes. I will read the date and the number.

Mr. Sullivan: Then the date and then the entry for Cheddar Loaf Cheese?

A. 2715, March 2, 6 cases of Cheddar Cheese, 150 pounds.

Q. Mr. Berman, by following the line of interrogation that Mr. Pratt pursued, what would be the average of that item?

A. 25 pounds average even per case.

Q. The next one?

A. 2779, March 3, 5 cases of Cheddar Loaf Cheese, 130 pounds.

Q. What would the average of that be?

A. 26 pound average even.

Q. The next one?

A. 2778, March 3, 2 cases of Cheddar Loaf, 50 pounds, average of 25 pounds even. 2932, March 7, 4 cases of Cheddar Loaf, average of 25 pounds per case.

March 7, 2929, 1 case of Cheddar Cheese, 25 pounds. March 10, 3095, 3 cases of Cheddar Cheese, 75, pounds, average of 25 pounds per case even. March 13, 3196, 3 cases of [3743] Cheddar Loaf, 80 pounds, average of 26-2/3 pounds, I think.

(Testimony of Henry Eugene Berman.)

I have one here undated, but in sequence it follows the preceding one. No. 3199, 3 cases of Cheddar Loaf, 75 pounds, an average of 25 pounds per case even. 3319, March 15, 2 cases of Cheddar Loaf, average 27 pounds. 3389, March 16, 1 case of Cheddar Loaf, 30 pounds.

March 17, 3438, 2 cases of Cheddar Loaf, 55 pounds, average 27½ pounds per case. 3436, March 17, 2 cases of Cheddar Loaf, 55 pounds, average of 27½ pounds per case. 3477, March 18, 3 cases of Cheddar Loaf, 80 pounds, average of 26-2/3 pounds. March 20, 3540, 7 cases—no, that is not Cheddar Loaf.

Q. Just go to the next item that has Cheddar Loaf?

A. March 24, 3861, 7 cases of Cheddar Loaf, 210 pounds, average 30 pounds. March 28, 4016, two pieces of Cheddar Loaf, 10 pounds, an average of 5 pounds per piece. March 28, 4012, 2 cases of Cheddar Loaf, average of 25 pounds per case.

Q. Mr. Berman, did you also make an examination of your file——

Mr. Pratt: May I direct attention to No. 3434, March 17? He omitted that.

Mr. Faulkner: We will try and see if we can locate that.

(Discussion between counsel at counsel table.)

Mr. Pratt: I think there is some confusion.

Mr. Faulkner: We will try and find that par-

(Testimony of Henry Eugene Berman:)

ticular [3744] invoice and whatever it shows, your Honor, we can read it into the record.

Mr. Pratt: Yes.

Mr. Sullivan: Q. Did you also make an examination of the invoices prepared and sent to you by Nye & Nissen, to your department, Nye & Nissen City Sales, for the period from February 15 to April 1, 1943, and covering deliveries by Nye & Nissen to Nye & Nissen City Sales of Cheddar Loaf Cheese? A. Yes.

Q. I will hand you a series of documents, white documents, purporting to be Nye & Nissen invoices to Nye & Nissen City Sales, and ask you to identify those? A. Yes, these are the same.

Q. Same dates, February 15 to April 1. This is also the six-weeks period immediately preceding the six weeks period selected by Mr. Pratt?

A. It is the same period corresponding with the invoices I have just read.

Q. Do you recognize the handwriting on those invoices?

A. Yes, these are my handwriting.

Q. Were those invoices a part of the regular records of your business? A. Yes.

Q. Were they received by you from time to time, by the City Sales department of Nye & Nissen?

A. They constitute an inter-departmental transfer of merchandise.

Mr. Sullivan: Mr. Pratt, I am going to offer these. [3745]

(Testimony of Henry Eugene Berman.)

Mr. Pratt: Okeh.

Mr. Sullivan: I offer these documents in evidence, your Honor.

The Court: They will be admitted and marked.

Mr. Sullivan: And ask they be marked, all of them, as one exhibit.

(The documents were thereupon received in evidence and marked Defendants' Exhibit DX.)

Mr. Sullivan: Q. Now, Mr. Berman, will you take these invoices which are Defendants' DX in evidence, and will you read them in the order in which they are grouped here by the Clerk, reading first the date and then the number which appears with an initial before it in the righthand corner of the invoice and then read just as you did for the prior invoices the items of Cheddar Loaf Cheese and the weights and the weight average?

A. February 23, D-701, 12 cases of Cheddar Loaf Cheese, 310 pounds: That would be an average of close to——

Q. Just under 26?

A. 312 pounds would be 26 pounds average.

February 25, D-733, 1 case of Cheddar Loaf Cheese, 27 pounds.

February 26, D-753, 2 cases of Cheddar Loaf Cheese, 53 pounds, an average of 28¼ pounds.

February 28, D-780, 24 cases of Cheddar Loaf Cheese, [3746] 603 pounds, an average of 25 pounds for the entire lot.

March 2, D-822, 31 cases of Cheddar Cheese, 795 pounds, that is slightly under 26 pounds average.

(Testimony of Henry Eugene Berman.)

March 3, D-870, 23 cases of Cheddar Loaf Cheese, 575 pounds, that would be exactly 25 pounds on an average.

March 17, D-1161, 2 cases of Cheddar Loaf Cheese, 50 pounds, an average of 25 pounds per case.

March 18, D-1176, 5 cases of Cheddar Loaf Cheese, 127 pounds, which is an average of 25½ pounds.

March 21, D-1209, 1 case of Cheddar Loaf Cheese, 24 pounds.

March 22, D-1236, 7 cases of Cheddar Loaf, 182 pounds, a 27 pound average.

March 24, D-1313, 7 cases of Cheddar Loaf Cheese, 182 pounds. Exactly 27½ pounds average.

March 27, D-1365, 1 case of Cheddar Loaf Cheese, 25 pounds.

March 28, D-1400, 2 cases of Cheddar Loaf Cheese, 60 pounds, an average of 30 pounds each one.

March 31, D-1458, 6 cases of Cheddar Loaf Cheese, 154 pounds, slightly under 26 pounds average.

Q. Now, Mr. Berman——

Mr. Pratt: Pardon me. One was missed, Mr. Sullivan, March 25, D-1335.

Mr. Sullivan: March 25. Yes, what is the number?

Mr. Pratt: D-1335, 3 cases weighing 78 pounds.

Mr. Sullivan: Well, if your Honor please, we will make a similar examination, as I assured your

(Testimony of Henry Eugene Berman.)

Honor, and we will advise Mr. Pratt with respect to the hand tags.

Mr. Pratt: I don't think it is important.

Mr. Sullivan: Q. Now, Mr. Berman, I will ask you to look at these hand tags from City Sales in your handwriting which are Defendants' DW in evidence, and which cover the period for your sales of February 15, 1944, to April 1, 1944. Now, during that period did you have the same method of preparing deliveries of cheese as you did during the period for which Mr. Pratt originally examined you, namely, the period from April 1, 1944, to May 15, 1944?

A. No. This is the period during which I assembled the cheese and then made up my handtags and the invoice thereafter and took the exact weight of the cheese as it was assembled and ready to be put on the truck.

Q. After April 1, 1944, did you change that method?

A. Yes. By checking that record it was easy to ascertain about the exact time when this took place, it was very close to the first of April.

Q. For the six weeks period that Mr. Pratt asked you about yesterday covering Cheddar Loaf Cheese, the method that you pursued, was that the method you told us about when I first examined you on direct examination?

A. That is it exactly, Mr. Sullivan. [3748]

Q. You remember when Mr. Nystrom quit, don't you? A. Yes.

(Testimony of Henry Eugene Berman.)

Q. That was about what time?

A. I think his employment terminated on the 12th or 13th day of May, 1944.

Q. I have asked you and have you from an examination of your records for the six weeks period after the six weeks selected by Mr. Pratt have you made an examination?

A. That we have done.

Q. Have you produced in court here a series of invoices of City Sales pertaining to the Sales of Cheddar Cheese by your department to the War Shipping Administration during the period from May 15, 1944, a period of six weeks to July 1, 1944?

A. We did that in the same manner.

Q. I will show you invoices which I have mentioned and that you have checked?

A. These are all my original yellow hand tags in my handwriting.

Q. Prepared by you?

A. In the regular course of business.

Q. Are they a part of the permanent records of Nye & Nissen?

A. They were taken from our permanent records.

Mr. Sullivan: Mr. Pratt, I will show you these. I am going to offer them in evidence. I offer these documents which Mr. Berman has just identified in evidence and ask that they be marked as one exhibit, if the Court please.

The Court: They will be admitted and marked.

(The documents were thereupon received in

(Testimony of Henry Eugene Berman.)

evidence and marked Defendants' Exhibit DY. [3749]

Mr. Sullivan: Q. Mr. Berman, I will show you Defendants' Exhibit DY in evidence, which are the City Sales tags covering Cheddar Loaf Cheese on your sales to the War Shipping Administration for the six weeks after the six weeks selected by Mr. Pratt following from May 15, 1944, to July 1, 1944, and I will ask you to read first the date and then the number which Mr. Hippeli wants as an identifying number and then the items of Cheddar Loaf Cheese and the weight.

A. 5/15, 6275—there is no Cheddar Loaf Cheese on that.

Q. Take the next one?

A. 5/18, 6433, 4 cases Cheddar Loaf Cheese, 105 pounds.

Q. That is an average of how much?

A. 26 pounds.

May 18, 6435, 4 cases Cheddar Loaf Cheese, 105 pounds, an average of 26¼ pounds. The previous one would be also 26¼ pounds.

May 22, 6649, 1 case of Cheddar Loaf, 25 pounds.

May 25, 6774, 5 cases Cheddar Loaf Cheese, 131 pounds, 26-1/5 pounds per case average.

May 26, 6839,—my error, no Loaf there.

Q. Take the next one.

A. May 26, 6840, 4 cases Cheddar Loaf, 105 pounds, 26¼ pounds per case average.

Q. You are passing me some of them that you find no Cheddar Loaf Cheese on?

(Testimony of Henry Eugene Berman.)

A. Yes. The ones I am not reading do not contain any Cheddar Loaf Cheese. [3750]

June 1, the stamp is not very clear, I believe it is 7078, 1 case of Cheddar Loaf Cheese, 25 pounds.

June 5, 7249, 2 cases of Cheddar Loaf Cheese, 52 pounds, an average of 26 pounds even per case.

June 5, 7250, 2 cases of Cheddar Loaf Cheese, 52 pounds, an average of 26 pounds per case.

June 5, 7250, 7 cases of Cheddar Loaf, 175 pounds, an even average of 25 pounds per case.

June 6, 7320, 2 cases of Cheddar Loaf Cheese, 52 pounds, an average of 26 pounds per case.

June 6, 7322, 6 cases Cheddar Loaf Cheese, 156 pounds, an average of 26 pounds per case.

June 8, 7447, 3 cases of Cheddar Loaf, 79 pounds, an average of 26-1/3 pounds per case.

There are quite a few of them without any Cheddar Loaf Cheese. There is June 13, 7680, 4 cases Cheddar Loaf Cheese, 100 pounds, an average of 25 pounds per case.

June 13, 7681, 5 cases of Cheddar Loaf Cheese, 125 pounds, an average of 25 pounds per case.

June 16, 7891, 2 cases Cheddar Loaf, 54 pounds, an average of 27 pounds per case.

June 17, 7893, 1 case Cheddar Loaf, 25 pounds.

June 16, No. 7895, 4 cases Cheddar Loaf Cheese, 106 pounds, an average of a little over 26 pounds per case, 26½ pounds per case. [3751]

June 16, No. 7896, 3 cases Cheddar Loaf, 80 pounds, slightly under 27 pounds per case average.

(Testimony of Henry Eugene Berman.)

June 24, 8078, 2 cases Cheddar Loaf, 52 pounds, an average of 26 pounds per case.

June 22, 8136, 2 cases Cheddar Loaf Cheese, 52 pounds, an average of 26 pounds per case.

June 28, 8406, 6 cases Cheddar Loaf, 150 pounds, an average of 25 pounds per case.

June 29, 8471, 2 cases Cheddar Loaf, 52 pounds, an average of 26 pounds per case.

June 30, 8552, 2 cases Cheddar Loaf, 52 pounds, an average of 26 pounds per case.

July 1, 8553, 7 cases Cheddar Loaf, 181 pounds, that would be 26, a little under 26 pounds average.

June 30, No. 8554, 1 case Cheddar Loaf, 25 pounds.

Q. During the six weeks period, namely, from May 15 to July 1, this is the six weeks following after the six weeks selected by Mr. Pratt, did you also have invoices from Nye & Nissen covering Cheddar Loaf Cheese to your department of Nye & Nissen City Sales?

A. Yes, the same system was pursued.

Q. Have you made an examination of your files and have you given to me and are these now invoices covering those transactions of Cheddar Loaf Cheese in that six weeks period?

A. These are the transactions from Nye & Nissen to City Sales for the six weeks period. [3752]

Q. Whose handwriting are they in?

A. Those are also in my handwriting.

Q. Are they received by your department in the regular course of business? A. Yes.

(Testimony of Henry Eugene Berman.)

Q. Are they a part of the permanent records of Nye & Nissen? A. That they are.

Mr. Sullivan: I am going to offer these in evidence, Mr. Pratt. Would you like to see them.

Mr. Faulkner: Do you have any corrections, Mr. Pratt, in the——

Mr. Pratt: No, I don't think we have any records on those which you just spoke of. Go ahead.

Mr. Sullivan: I offer these in evidence, these documents, invoices from Nye & Nissen to Nye & Nissen City Sales, that the witness has just been identifying and ask that they be marked, the various invoices, as one exhibit for the defendants.

The Court: Admitted and marked.

(The documents were thereupon received in evidence and marked Defendants' Exhibit DZ.)

Mr. Sullivan: Now, Mr. Berman, I will hand you Defendants' Exhibit DZ in evidence, being the series of Nye & Nissen invoices to Nye & Nissen City Sales Department covering Cheddar Loaf cheese for the period of six weeks immediately following the six weeks selected by Mr. Pratt, namely, from May 15 to July 1, 1944, and I will ask you to do the same that you did [3753] with the other Nye & Nissen invoices, namely, to read the printed number, date and the Cheddar Loaf cheese items.

A. May I hand them to you, Mr. Sullivan, it will facilitate matters.

Q. Yes.

A. If there is no Cheddar Loaf cheese——

(Testimony of Henry Eugene Berman.)

Q. You just pass the document to me if there is no Cheddar Loaf cheese.

A. May 17, 2444, 2 cases Cheddar Loaf cheese, 52 pounds, an average of 26 pounds.

May 19, 2503, 5 cases Cheddar Loaf cheese, 130 pounds, an even average of 26 pounds per case.

May 20, 2510, 3 cases Cheddar Loaf cheese, 76 pounds, an average of 25-1/3 pounds per case.

May 24, 2580, 21 cases Cheddar Loaf cheese, 543 pounds, an average slightly under 26 pounds per case.

Q. When you have said in your testimony slightly under or slightly over, you mean that is not an exact weight or average of 26 or 25 or whatever it might be?

A. Yes, and I may even be wrong because I am calculating these mentally; I have not memorized them.

May 27, 2639, 2 cases Cheddar Loaf cheese, 51 pounds, an average of 25½ pounds per case.

June 1, 2728, 2 cases Cheddar Loaf cheese, 49 pounds, an average of 24½ pounds per case.

June 1, 2374, 4 cases Cheddar Loaf cheese, 97 pounds, an average of a little over 24 pounds, 24¼ pounds per case, [3754] to be exact.

June 3, 2780, 9 cases Cheddar Loaf cheese, 226 pounds, an average of 25-1/9 pounds.

June 5, 2791, 13 cases Cheddar Loaf cheese, 332 pounds; that is a 25½-pound average per case.

June 5, 2808, 18 cases Cheddar Loaf cheese, 472 pounds, an average of——

(Testimony of Henry Eugene Berman.)

Q. Is that a little over 26 pounds?

A. Yes, that would be over 26 pounds. June 13, 2951, 9 cases Cheddar Loaf cheese, 234 pounds, an average of 26 pounds per case.

June 14, 2992, 35 cases Cheddar Loaf cheese, 917 pounds, an average——

Q. What was the date of that?

A. On the 14th of June, 2992.

Q. Is that a little over 26 pounds.

A. I will take your word for it. June 20, 3120, 23 cases Cheddar Loaf cheese, 599 pounds; that is almost 26 pounds per case, or a little under.

Q. You may find it a little over.

A. Yes. June 21, 3131—I am sorry, no Cheddar Loaf cheese on there.

June 27, 3238, 42 cases Cheddar Loaf cheese, 1060 pounds. That is an average——

Q. I think that is a little over 25 pounds, 25 pounds and a fraction, Mr. Berman?

A. I believe that is all.

Q. You find no other entries on Defendants' DZ in evidence? A. No.

Q. Now, Mr. Berman, during the six weeks' period which is the [3755] six week's period after the six weeks taken by the Government, namely, from May 15, 1944, to July 1, 1944, did you have the same method of filling the cheese orders that you had during the six weeks' period selected by the Government, namely, from April 1, to May 15, 1944?

(Testimony of Henry Eugene Berman.)

A. No. At that time it was necessary for me to revert to my former practice.

Q. The six weeks' period that you had before, before April 1st of 1944? A. Yes.

Q. During any of this six weeks' period was Mr. Oscar Nystrom working for you, namely, during the period beginning with May 15, 1944?

A. No, he had left our employ then.

Mr. Sullivan: Will your Honor indulge me for a moment?

That is all.

Further Recross-Examination

Mr. Pratt: Q. Mr. Berman, at no time—as you read there invoices at no time did the Cheddar loaves average 30 pounds, did they?

A. Not in the particular way we have them averaged. However, there might have been some 30's.

Q. As you read these invoices, it is quite apparent there was no time when these cases of Cheddar loaves weighed 30 pounds?

A. No, because you have the records and there was one case where there was an entry, where there was a purchase of one case of Cheddar cheese which weighed 31 pounds. There was another where there was a purchase of two cases of Cheddar Loaves weighing 60 pounds, which clearly indicates that there [3756] were 30-pounders or more among the Cheddar Loaf Cheese transactions.

Q. That is the only incident that you found in reading these invoices?

(Testimony of Henry Eugene Berman:)

A. As far as the averages are concerned, where there were 20 or 30 cases involved it would be impossible for me to say what the exact fact would be.

Q. You have discussed two periods or three periods of time? A. Yes.

Q. The first period that you have discussed was from the 15th of February to the 1st of April?

A. Yes.

Q. Then the next period was from April 1st to May 13th, which is the period covered by the shipment to the War Shipping Administration, covered by the allegations of the indictment, that's right, isn't it?

A. I believe that is correct.

Q. Then the third period you have is six weeks after Nystrom left? A. Yes.

Q. Isn't it a fact that just after the time that Nystrom left you found out that the FBI were investigating and checking your shipments to the War Shipping Administration?

A. That is not a fact, Mr. Pratt.

Mr. Pratt: That is all.

The Witness: You asked me that question before.

Further Redirect Examination

Mr. Sullivan: Q. Mr. Berman, may I have those exhibits? Mr. Pratt just asked you about averages of Cheddar Loaf cheese as indicated in the readings which you made from the invoices. [3757]

(Testimony of Henry Eugene Berman.)

Is it your testimony, for instance, where Cheddar Loaf cheese averaged 27 or 27½ pounds during any of these periods that there would not be any 30-pound cases in that item?

A. Definitely not, Mr. Sullivan.

Q. For instance, I will show you an item from this DY in evidence which is during the period——

Mr. Pratt: If the Court please, this is just repetition. These are all in evidence.

Mr. Sullivan: I beg your pardon, Mr. Pratt. On recross-examination Mr. Pratt has referred to the fact that a reading of the averages would allow an inference to be drawn that there were no 30-pound Loaves of Cheddar cheese in any of the orders. What I want to illustrate is that where the average shows, for example, an average of 27 pounds or 27½ pounds, it still would allow 30-pound cases of Cheddar cheese to be there, because that is only an average.

Mr. Pratt: It is a matter of argument.

The Court: Read the question and the answer.

(The record was read by the reporter.)

The Court: The question and answer may stand.

Mr. Sullivan: Q. Mr. Berman, I show you Defendants' DY in evidence, and particularly from that exhibit an invoice to U.S.A., W.S.A., dated June 16, 1944, and bearing the number 7895, and ask you if there is any Cheddar Loaf cheese item on that invoice.

A. Yes, there is, Mr. Sullivan. [3758]

Q. What is it?

(Testimony of Henry Eugene Berman.)

A. Four cases of Cheddar Loaf cheese, 106 pounds. What is the average weight of that item?

A. Average weight of that item would be 26½ pounds even, I believe.

Q. Would that mean that every box of cheese was 26½ pounds?

A. No, it certainly would not.

Q. From your experience in handling this cheese at the period we have mentioned, for example, assuming an item of Cheddar Loaf cheese would have an average weight of 27½ pounds, would there be cases of 30 pounds in that shipment at that time?

Mr. Pratt: This is argumentative. I object to this.

The Court: He may answer. Proceed.

The Witness: May I have the question?

(The question was read.)

A. Mr. Sullivan, that could very well be. We have had a purchase here of one case of 24 pounds, another case of 31 pounds. If we put both of those cases together they would make 55 pounds. If they happen to go out in one shipment that would be an average of 27½ pounds, but you have a range from 24 to 31 pounds in the particular case.

Q. Mr. Berman, I will show you an invoice of Nye & Nissen to Nye & Nissen City Sales included in Defendants' DX in evidence, being invoice No. 1400, dated 3/28/44, and ask you if you can find an item of Cheddar Loaf cheese on that invoice.

A. Yes. This is the one I had reference to

(Testimony of Henry Eugene Berman.)

when I answered [3759] Mr. Pratt a few minutes ago, 2 cases of Cheddar Loaf, 60 pounds.

Q. Does that mean from reading that and from your experience that each of those cases weighed 30 pounds?

A. No; one might have been 32, the other 28.

Q. In your experience, is that time and again true?

A. It would be very, very odd if your average happened to be the same weight.

Q. Mr. Berman, from the great bulk of your sales of cheese are you able to state what proportion, roughly, of it went to the War Shipping Adminitration?

A. Well, I would have to guess—it would be less than one-quarter, I think. I never did compute it.

Q. In other words, the great bulk of the cheese was not going to the War Shipping Administration? A. That is correct.

Mr. Sullivan: That is all.

Mr. Pratt: That is all.

The Court: Step down.

Mr. Faulkner: Your Honor, I would like to read into the record at this time the provisions of the Matson Navigation Company purchase orders that are in evidence in relation to the purchase of eggs, butter and cheese in the year 1944, the fine print on the reverse side of the purchase order.

The Court: Raise your voice.

Mr. Faulkner: "Inspection. All merchandise

described [3760] herein is subject to inspection by purchaser upon arrival at destination even though payment may have been made for the same prior to such arrival."

That provision is on every Matson Navigation order in this case, your Honor.

ABRAHAM MONCHARSH,

called as a witness for the Defendants; sworn;

The Clerk: Will you state your name?

A. Abraham Moncharsh, M-o-n-c-h-a-r-s-h.

Direct Examination

Mr. Faulkner: Q. You have given your name. Where do you reside, Mr. Moncharsh?

A. 2500 Jackson Street, San Francisco.

Q. Are you married? A. I am.

Q. Are you a man of family?

A. I have three daughter, two sons-in-law and a grandson.

Q. In the year 1938 until 1945 were you an officer of the firm of Nye & Nissen?

A. I was.

Q. What was your position during that period of time?

A. President of Nye & Nissen.

Q. Were you a director of that company, Mr. Moncharsh? A. I was.

Q. Were you the owner of that company?

A. Part owner.

(Testimony of Abraham Moncharsh.)

Q. Who owned the firm of Nye & Nissen in the year 1938? [3761]

A. Baum & Moncharsh.

Q. What name is that?

A. Baum & Moncharsh.

Q. Is that a California Company? A. No.

Q. Are you interested in the firm of Baum & Moncharsh? A. I am.

Q. So that any ownership that you should have in the firm of Nye & Nissen flows from an interest in the firm of Baum & Moncharsh? A. Yes.

Q. In the years 1938 to 1945, that period covered in this indictment, what was your maximum interest in the firm of Baum & Moncharsh?

A. One-third.

Q. As the president of the firm of Nye & Nissen in the years that I have mentioned, 1938 to 1945, what business was that company engaged in generally during that period?

A. Butter, eggs, cheese and dairy feeds and poultry feeds, shell eggs, frozen eggs, oh, several other items.

Q. In connection with the carrying on of the business that you have described, was it all carried on at 324 Townsend Street and later at Seventeenth and Missouri Street, or did you have other branch packing plants and things of that nature?

A. The branch at 324 Townsend Street and the present branch was only considered as a main office. We have packing plants, an egg-packing plant in Petaluma, a creamery in Petaluma, a cheese fac-

(Testimony of Abraham Moncharsh.)

tory at Pt. Arena, cheese factory at Covelo, and a creamery at Etna, and we have three packing plants in Utah, [3762] and a feed plant in Utah. We have an egg-packing plant in Santa Cruz and a feed place at Watsonville, and also a branch office at Los Angeles.

Q. Now, Mr. Moncharsh, in connection with that business how many men or women did you employ?

A. In the neighborhood of about 300.

Q. What is the annual payroll, about?

A. Over $300,000.

Q. In the year 1938, January of 1938, until 1944, what were the problems of that business to which you devoted your attention?

A. There were a great many problems. It was my problem to have meetings with the various plant managers, discuss their problems, discuss the help problem, discuss the purchase of farm products, such as eggs and feed which we had to supply to various producers, had to buy packing materials, such as cases, fillers, flats, nails, and many other things that apply just to the egg plants.

Q. In reference to carrying on that business, Mr. Moncharsh, generally what was the volume of business in dollars that was carried on by your firm in those years?

A. Between five million and eight million dollars.

Q. Now, in connection with the subject matter of financing the volume of sales of that magnitude, what did you do? I don't mean what you did per-

(Testimony of Abraham Moncharsh.)

sonally every day, but in not too great detail outline to the court and jury the problems to which you devoted your attention in respect to financing a [3763] business in that volume.

A. At certain times of the year production is considerably greater than could be consumed. Naturally, we had to place the over-production in those sales all over the country. It was my problem to have meetings with our bankers to finance this production, this applies to butter, eggs, and cheese, and also feed products.

Q. Why would you devote any time to the subject matter of feed products, Mr. Moncharsh?

A. It was our duty to supply the producers with feed in order to get eggs.

Q. In respect to the conduct of the egg business, in addition to the financing in the manner you have indicated, did you devote your time and what ability you may have in the egg business to problems that arose from the financing of orders or purchases from Governmental agencies?

A. Yes. For example, if we received an order from a Government agency, let us assume for 50 or 75,000 cases of eggs, we had to take these documents and our money to the bank.

Q. Now, that was a part of the business to which you devoted your attention? A. Absolutely.

Q. In connection with the over-all operations of the business, did you have problems to which you devoted your attention relating to labor relations and wage conditions?

(Testimony of Abraham Moncharsh.)

A. Yes. All through the country, the State of California, State of Utah, and some other States.

Q. In the years which you might divde almost by the time you [3764] moved from Townsend Street to Missouri Street, in the year 1938 up to about 1941 or '42, was there a very definite and marked change in the operation of the egg business in California? A. Yes, indeed.

Q. What was that?

A. Between 1938 and just prior to the outbreak of the war we packed and shipped in straight carload lots our eggs to all the Eastern markets.

Q. May I interupt you. During the period that you were a shipper of eggs to the Eastern market did you devote your time as president of that company to the creation and the establishment of those Eastern markets and the maintenance of them?

A. It was my duty.

Q. That was part of your duty? A. Yes.

Q. During this period of time was your company the only company that was an exporter out of the State of eggs? A. Oh, no.

Q. Other companies in California——

A. California, Utah, and Washington.

Q. I mean the Pacific area. A. Yes.

Q. Did you, during the period of time you have described shortly before the outbreak of the war devote considerable of your time to problems incident to the marketing of tremendous quantites of eggs in metropolitan centers of the East?

A. That was my duty.

(Testimony of Abraham Moncharsh.)

Q. Did you travel in that connection?

A. Most of the time.

Q. Where would you travel?

A. I would travel to various [3765] plants, go back to New York, Chicago, Philadelphia, visit many of our buyers.

Q. At the time, sometime about the outbreak of the war, did I understand you to say that the egg business changed in some very material respect?

A. Considerably.

Q. What was the change?

A. Well, just prior to the outbreak of the war the population on the Pacific Coast had been increasing in leaps and bounds. The demand for eggs had been suddenly increasing to a point where the State of Washington and the State of Utah and the State of California suddenly became importing states instead of exporting. [3765-a]

We had to suddenly reach out to the Middle West and import large quantities of eggs in particular. Butter had been imported prior to that, and there were small quantities of eggs brought into the State of California at times only. However, the quantity was small. Just prior to the outbreak of the war we brought in hundreds and hundreds of cars of eggs, and we had to bring them in to supply this enormous demand.

Q. When you commenced importing, using that word as descriptive of the West Coast, here, anything coming into it, did you then abandon the

(Testimony of Abraham Moncharsh.)

sale of eggs and the export of eggs to the Eastern cities? A. Yes, we had to.

Q. When you came to a position where you had the abandonment of all your Eastern outlets for your eggs, which member of your organization devoted his time to the creation of the sources of supply to secure eggs to come into California?

A. Mr. Jack Smith and myself.

Q. Who is Mr. Jack Smith?

A. He is the vice-president of our company.

The Court: We will take a recess.

(Recess.)

Mr. Faulkner: Q. I was asking you, Mr. Moncharsh, who Jack Smith was.

A. He is the vice-president of our company.

Q. In the quantities of business that you have given us in dollars, Mr. Moncharsh, during the years 1938 to 1945, will you tell me, please, in quantities of eggs and butter, leaving [3766] out the other items, how would that range?

A. Approximately between 250 and 325,000 cases of eggs and between four and seven million five hundred thousand pounds of butter.

Q. In connection with the handling of butter, Mr. Moncharsh, where was the butter ordinarily handled, or, rather, how was the butter ordinarily handled in the years that I have mentioned, up to the time that you established your new plant out on Seventeenth and Missouri Streets?

A. I would say that approximately 95 or 97

(Testimony of Abraham Moncharsh.)

percent of our butter came from the Middle West.

Q. And where did it go?

A. When it came here it was mostly sold in bulk lots, carload lots, to the various dealers in San Francisco, such as the Golden State, Challenge, Lucerne butter, which is a department of Safeways, and other dealers. We shipped a good portion of the butter to Honolulu and also a small percentage to steamship companies and Army—Government agencies.

Q. Mr. Moncharsh, in this case there has been a substantial amount of testimony relating to butter on Townsend Street. I will ask you if the 3 percent or the 5 percent of butter, the difference between 95, 97 and 100 percent, was that the quantity of butter that was handled during those years down on Townsend Street? A. Yes.

Q. Directing your attention to a period that commenced sometime around the outbreak of the war and the establishment of Price [3767] Administration, in the years prior to that, in relation to the difference in value between various type eggs, various grade eggs, such as Standards, Extras, and Special, what would the range in the difference in price of eggs that are in those three grades be in the years before the establishment of the OPA?

A. I would say that they would run between a grade of Standards and AA's, between half a cent a dozen and a cent and a half a dozen.

Q. It would range between those figures?

A. Yes. And a good many times, for example,

(Testimony of Abraham Moncharsh.)

if we sold, we will say, AA's—let's take a figure of 50 cents a dozen in the morning—in the afternoon we may sell Standards for 52 cents, which indicated a firm market, a firm condition has developed.

Q. In the handling of the business of your company, in relation primarily to the egg business, was the market at which eggs were bought and sold a fluctuating market? A. Very.

Q. And did it fluctuate from year to year, or was it a market which fluctuated from month to month, week to week, and day to day?

A. From minute to minute.

Q. And did you devote your time to the problems that are occasioned by dealing in substantial quantities of merchandise in a market that was constantly changing? A. Absolutely.

Q. There were many instances, were there not, Mr. Moncharsh, in the years 1938 to 1940, when on sales to the United States [3768] Army you would be securing from them, for deliveries in the same months, more in dollars for Standard eggs than you would for Extras?

A. Absolutely. I looked it up the other night.

Q. Why would that be?

A. Well, it depends upon supply and demand. And as I tried to describe to you before, we may bid in the morning one price for a certain grade, for a lower grade, and in the afternoon we may bid a higher price for these lower grades, such as Standards.

Q. In order that the court and jury may have

(Testimony of Abraham Moncharsh.)

a clearer picture of the background out of which these instances are supposed to have come, it relates to the Army in the years 1938 and prior to the war, how was Army business secured in those days?

A. The Army used to mail out proposals. Some of them were on a monthly basis, some of them came out more often—small quantities, large quantities, and for very large quantities—for delivery to various parts of California, and so forth. Naturally, we had a right to bid on any quantity, on any portion, which we did, and if our price was in line we got all the business, or a portion of the business. Sometimes we bid on the entire lot and we got the entire quantity if we were the lowest bidder, and at other times we bid also for the entire quantity and we got a portion only, even though we were the highest bidder, and that is because the industry was not in a position to bid on all of their requirements.

Q. When you had awarded to you bids they would not be filled, [3769] if there was 15,000 cases of eggs for some very large order, you would not fill that order at one time, is that correct?

A. Oh, no.

Q. The orders would be filled as the Army would request and delivered to the places they would request? A. Wherever they would designate.

Q. Under the relatjonship that was created by the egg dealers, such as your firm and the Army as a buyer, was it uniformly provided in all your con-

(Testimony of Abraham Moncharsh.)

tracts—and I will bring the actual contracts in later—that all inspections at point of delivery controlled the acceptance of the eggs?

A. As far back as I can remember every delivery, every sale that we had ever made to a Government agency, either direct or indirect, was always subject to inspection and acceptance at the point of delivery, even though the merchandise was inspected at the point of origin.

Q. In filling the orders for the Army during the years 1938 to 1942, did the great bulk of the eggs that went to the Army pass through your plant at 324 Townsend Street?

A. Absolutely not.

Q. Where did they come from?

A. From the various packing plants. We couldn't possibly bring in these large quantities of eggs to our San Francisco plant. In fact, it would not be the right thing to do.

Q. At all events, you did not?

A. Absolutely not.

Q. Some of the orders for the Army were filled and certain [3770] inspections at the point of origin occurred in your plant at 324 Townsend Street?

A. Small orders or small emergency orders.

Q. In the period that I have mentioned, when you were at 324 Townsend Street, and at all other times subsequent to that, how did you engage yourself to supply butter to the United States Army? Withdraw the question in that form.

In the years up to the outbreak of the war, how

(Testimony of Abraham Moncharsh.)

did you get orders for butter from the United States Army?

A. In the same—Read that—After the outbreak of the war?

Q. No, before the outbreak of the war.

A. In the same manner. They would mail out proposals and we would bid on the various quantities of butter that we would care to handle.

Q. Now, in connection with that bidding, Mr. Moncharsh, did you devote any of your time or give your attention to that bidding?

A. Not very much on butter, no.

Q. Who determined or who took the burden of handling the butter transactions in relation to bidding and in relation to filling orders in your organization? A. Mr. Jack Smith.

Q. In relation to bidding on the egg orders with the Army, did you devote your time and give your attention to that?

A. Well, Mr. Jack Smith and I used to discuss the prices that we felt would be just.

Q. Mr. Moncharsh, in order to give the jury a picture, in your physical setup at Seventeenth and Missouri, do you and Mr. [3771] Smith occupy separate private offices?

A. We sit in the office together with anybody else.

Q. Well, you have a private office, haven't you?

A. We have.

Q. You have one desk facing the window and

(Testimony of Abraham Moncharsh.)

Mr. Smith's desk is desk-to-desk facing the door, isn't that correct?

A. We sit facing each other.

Q. And in the same room?

A. In the same room.

Q. Is that correct? A. That is right.

Q. Did you have a similar situation on Townsend Street? A. Absolutely.

Q. In other words, the two of you, you as the president and Mr. Smith as the vice president, either singly or together, determined the problems on subjects that have been referred to in your testimony thus far, is that correct?

A. Absolutely.

Q. You have indicated that the butter orders and egg orders from the Army were secured by bidding. Now, did that method of supplying butter and eggs to the Army change? A. It has.

Q. How has it been handled in the last—over the period of April, 1945 back to, say, April, 1942?

A. The quartermaster marketing center was organized.

Q. Do you remember when that was?

A. I believe in the middle of 1941.

Q. In 1941? A. Yes.

Q. And when it was organized and commenced to function, did it function as a purchasing agent for the United States Government? [3772]

A. For all agencies except the steamship companies.

Q. Did they handle the purchases by bids?

(Testimony of Abraham Moncharsh.)

A. Practically. They didn't mail out any exactly proposals. However, they did mail out originally lists of the large quantities of eggs that they would need for delivery on certain days, certain weeks, or certain months, and we used to respond to them by telephone. And we have told them that we could give them so may cars, so many thousands of cases of eggs for delivery various days, various weeks, and various months, at a certain price. If our price was in line with competition we got the business. If it was not we did not get it, and we had to wait another day or two, and our price either advanced or it declined.

Q. In other words, in transactions of that kind, in dealing with the Army in those transactions, are they transactions that involve substantial quantites of merchandise?

A. It ran up at one time as high as 150,000 cases of eggs.

Q. That would be a great deal of money, would it not? A. More money than I have.

Q. Was that a phase of your business in these years that you devoted your time to in determining the positon of your company in relation to the desires of the Army as a purchaser of large quantites of butter and eggs?

A. Absolutely.

Q. Was your business changed when the OPA came into effect? A. Yes. [3773]

Q. In relation to the marketing center, is that correct? A. Yes, considerably.

(Testimony of Abraham Moncharsh.)

Q. Was there a change, Mr. Moncharsh, in which quotations and pricings were eliminated and merely orders were placed?

A. Well, not entirely. The quartermaster marketing center followed their original procedure and asked for prices. However, when the OPA went into existence we were burdened again with problems to make sure that we did not go above the ceiling prices, which we have to watch very, very carefully.

Q. Mr. Moncharsh, I was directing your attention, when the OPA was established and fixed a ceiling, whether the sales were ordinarily at the ceiling to Army agencies.

A. Yes. Well, now, they were never over the ceiling. We could have sold them below the ceiling.

Q. That is what I mean. In other words, when the Government established a ceiling under the OPA regulations, were you still faced with the problem of bidding under that ceilng with the United States Army marketing center?

A. If we had a large supply, we had to bid below the ceiling.

Q. In other words, the eggs are one commodity that sold and were sold at less than ceiling prices from time to time, is that correct? A. Yes.

Q. You have outlined here at some length, and yet with some brevity, the things to which you devoted your attention in the years 1938, 1939, and 1940, and so on. Now, who was [377-4] designated

(Testimony of Abraham Moncharsh.)

in your organization to take the responsibility of the delivery and the filling of orders in your plant on Townsend Street?

A. Mr. Ruby Goddard and Henry Berman.

Q. Were the duties of those two men divided or did either do the work of the other?

A. Well, they controlled different departments.

Q. Which department was Mr. Berman in?

A. Originally, that is, at first, he was in charge of the Coast Egg Products Company.

Q. Was that a company that the firm of Nye & Nissen was interested in? A. Yes.

Q. Do you know the exact details at this time, Mr. Moncharsh, of the stock ownership and relationship of Nye & Nissen to other stockholders?

A. I believe that Nye & Nissen had an investment of $15,500 in that corporation, and two other young men—their names Phil Sidell and Max Wallach had an interest there, about $3000. However, we had a written agreement with them whereby they were to receive 50 percent of the profits if they made any. They ran the business entirely.

Q. That business was related, primarily, to filling orders for city sales, is that right?

A. City sales and also to bakeries. Originally they did not handle any steamship business.

Q. At the time that they were engaged in the business of supplying bakeries, city sales, and sales of that nature, was Nye & Nissen also selling in the same field in competition [3775] with the Coast Egg Products Company?

(Testimony of Abraham Moncharsh.)

A. No. Nye & Nissen during that period sold in carload lots for shipment to the Eastern markets and also to other jobbers, steamship companies, and to Government agencies.

Q. And did it supply Coast Egg Products with this merchandise?

A. We did. However, they had the privilege of buying it elsewhere if they could.

Q. In connection with the business that was conducted on Townsend Street, and of which Mr. Goddard had charge, did that business require inspection of merchandise from time to time by the United States Army inspectors? A. Yes.

Q. In the course of that business, Mr. Moncharsh, did you handle those inspections for the Army for your company? A. No.

Q. Have you discussed inspections with those Army inspectors?

A. Oh, in a casual way, if I happened to be on the floor, but nothing to speak of.

Q. Did you ever talk to Colonel Hand about inspections? A. I have.

Q. Did you ever talk to Colonel Kielsmeier about inspections?

A. Well, no, not about inspections. The reason for that is, one morning I happened to say, "Good morning" to the Colonel and he wouldn't answer me.

Q. Well, have you observed him in and about the plant, Mr. Moncharsh? Have you observed him in and about your plant?

(Testimony of Abraham Moncharsh.)

A. I have, yes. [3776]

Q. Did you ever see him say "Good morning" to anybody?

A. Well, if anyone did say "Good morning" to him he would say, "What is good about it?"

Q. Was he the talkative type? That is what I am trying to get at. A. No.

Q. When he made up his mind about an egg inspection did you have an argument about egg inspection with him?

A. I wouldn't dare.

Q. What? A. I wouldn't dare.

Q. Did you stand out by a truck and take a lot of eggs out that Mr. Andrade had driven up and start a long discussion with Colonel Kielsmeier about, "Why did you turn these eggs down?"

A. Never.

Q. Colonel Hand, who sits there—have you talked to him on many occasions?

A. Yes, I have.

Q. Did you discuss with him his methods of inspecting eggs in your plant? A. I have.

Q. On many occasions?

A. On several occasions.

Q. Did you discuss with him the matter of his presence in the plant for the purpose of inspecting?

A. I have.

Q. What did you tell him?

A. Mr. Ruby Goddard informed me that Colonel Hand—I believe he was a captain at that time—is quite critical in making his inspection and he doesn't seem to be able to give him what he wants.

(Testimony of Abraham Moncharsh.)

He has already tendered him higher quality of eggs than the contract called for and [3777] he hasn't been able to satisfy him. And, in fact, he asked me not to take on any more business, not that type, not that kind of business where it requires that kind of inspection by Colonel Hand.

At that time I did not answer Ruby Goddard. I didn't give him any particular answer. And I watched the way Colonel Hand has been making his inspections. At one time in particular I saw him take four or five eggs out of a case, walk outside—this happened on Townsend Street in 1942—walked outside into the bright sunlight and looked at these few eggs that he had in his hand, and when he came back I saw these eggs. He didn't put them back into the filler. He put them right on top of the filler, the eggs.

"I don't want these eggs."

I went back there and I looked at this handful of eggs. He never even looked at them at the light, at the candling light. He saw a spot of dirt, a slight spot, not much bigger than the tip of a pencil. I examined those eggs for outside appearance. They looked beautiful. And Colonel Hand —Captain at that time—was just about ready to walk out of the plant, and I followed him. It happened at the edge of the plant, the platform. I said, "Captain, I want you to do me a personal favor."

Very obligingly, "Sure, why not?"

I said, "You tell your commanding officer that

(Testimony of Abraham Moncharsh.)

I don't [3778] want you to come into this plant again and make an inspection."

Q. What happened after that?

A. Colonel Hand said, "If that is what you want, O.K."

That same day in the afternoon I received a telephone call from Colonel Foster to verify whether I had made such a statement.

I said, "I absolutely have. If your men want to come in here and make fair commercial inspections they are welcome. But there is no use in having anyone come in here and make inspections with the sole purpose in turning merchandise down, because there is absolutely no reason for it. We have tendered higher qualities of eggs than your contract called for and we can't do any more."

Q. Mr. Moncharsh, in the years prior to the outbreak of the war, what general type of eggs was Colonel Hand inspecting for, for sale to the Army? What were the bulk of his orders for?

A. All issue eggs were Standards, Grade B; with the exception of a few cases every once in a while which we call Sales Commissary, packed in one-dozen cartons, and that is a very few cases, and those were higher qualities.

Q. Which department of the Army was buying the higher quality eggs?

A. The Sales Commissary.

Q. You have stated to the jury that you have tendered on occasions eggs of a higher quality

(Testimony of Abraham Moncharsh.)

than the eggs that the Army inspector was seeking under his order, is that correct? [3779]

A. Absolutely.

Q. Have you ever tendered to the United States Army inspector, Colonel Hand, or Colonel Kielsmeier, eggs which have been inspected by the Department of Agriculture, passed as Extras, and have them turned down by the Army inspector as Standards?

A. I have. In fact, Colonel Hand, himself, passed the remark, "What is the idea of that stamp on the cases? We don't care about those stamps. Those stamps don't mean anything to us. Our grades are entirely different from the Department of Agriculture. Our grades are higher."

Q. In certain seasons of the year, Mr. Moncharsh, in the months of January, February, March, April, May and June, during the period of time when all your eggs were coming from your own packing plants, what would the general quality of those eggs be that came into your plants?

A. Came into our plants where?

Q. Petaluma, Santa Cruz, Utah.

A. On the quality?

Q. Yes.

A. I would say on an average, to be sure, conservatively, 85 AA's.

Q. In other words, Mr. Moncharsh, in the years before California became an importer of eggs, was the most substantial part of your egg business devoted to the preparation, sale and delivery of eggs

(Testimony of Abraham Moncharsh.)

that have been handled in packing plants on the West Coast? A. That is right.

Q. The largest of those plants was where?

A. Petaluma.

Q. The eggs that were handled on Townsend Street, where did [3780] the bulk of those eggs come from in the years 1939, 1940, and 1941?

A. From the various plants.

Q. Which plant predominated in the matter of supplying eggs? A. Petaluma.

Q. In connection with the——

A. I may add this: The reason that our eggs were of such high quality, because Nye & Nissen were the only ones, the only firm on the Pacific Coast that picked out their eggs daily from the producers.

Q. You mean the ranchers?

A. The ranchers, every day.

Q. In connection with the eggs that came into your plant from Petaluma or your packing plants in the years up to 1942, were all eggs that came from the packing plants candled and graded before they got into your plant on Townsend Street?

A. That is correct. We had to candle them at the packing plant so that these packing plants will know exactly what to pay to the producers.

Q. It is the candling of the packing plants that determines the rancher's price, is that correct?

A. That is correct.

Q. And then uniformly, Mr. Moncharsh, eggs that would come into your plant on Townsend

(Testimony of Abraham Moncharsh.)

Street would have been eggs which had been at a prior time candled and graded in some plant?

A. That is correct.

Q. Were you a buyer of eggs from producers of eggs other than your own plants?

A. Yes. We bought eggs from other packers right in Petaluma, San Francisco, most everywhere. [3781]

Q. Were the eggs that you bought from packers eggs that had been candled and graded in the plants of those packers?

A. Candled, graded, and inspected by the Department of Agriculture.

Q. In connection with the operation of your business when you were on Townsend Street when orders came in to be filled—purchase orders, telephone order, or other orders for local sale and delivery—did you pass on those sales and deliveries?

A. No, I never even saw purchase orders.

Q. Who handled that for the firm of Nye & Nissen? Over whose desk would orders that would be phoned in or called in be handled?

A. By Mr. Jack Smith.

Q. In relation to the city sales customers, the grocers, the bakers, and all the customers that City Sales had, or the Egg Producers Company, whatever name it was operated under, did those orders pass over your desk? A. No, sir.

Q. Who handled those?

A. I had no time to handle that.

(Testimony of Abraham Moncharsh.)

Q. Regardless of the matter of time, did you handle them? A. No.

Q. Did you direct as orders would come in from day to day, would you in addition to your other duties sit down and tell, or stand up and tell, or in any manner tell Mr. Berman how to fill an order for 45 cases of eggs, 12 cases of cheese, or any other similar order?

A. Absolutely not. These boys have been with our firm for a good many years, and they know how [3782] to handle a small order.

Q. How long have they been handling small orders with reference to 1938 and 1945?

A. All these years.

The Court: It is time for a recess. The jurors may be excused until two o'clock this afternoon.

(A recess was taken until 2:00 o'clock p.m.). [3782-a]

Afternoon Session, March 29, 1946, 2:00 p.m.

ABRAHAM MONCHARSH

recalled;

Direct Examination (Resumed)

By Mr. Faulkner:

Q. During a period of time, Mr. Moncharsh, 1939 up to sometime in 1942, did the company, Nye & Nissen, have in its employ a man named Henry Pineda? A. Yes.

(Testimony of Abraham Moncharsh.)

Q. You saw and observed him around the premises from time to time?

A. Quite regularly.

Q. Do you know where he was generally?

A. In the egg breaking room.

Q. In the egg breaking room?

A. Yes, sir.

Q. Do you recall, Mr. Moncharsh, whether or not you ever had a conversation or a conference with Mr. Goddard or Mr. Menges, fixed by Mr. Pineda in 1942 and then changed to the month of June, 1941, when, according to Mr. Pineda, you gave a direction that all that were to be taken out of a certain quantity of eggs that were there in the plant were Black Rots and Leakers and that the grade of eggs that were to be made were to be Grade A for the Army, and that it was an order that took a week or so to fill? Do you ever remember any incident in connection with giving any directions of that type to Mr. Goddard in relation to filling an Army order?

A. I never had such a discussion and never gave such a direction.

Q. An order that would require a week to fill or more—how large an order would that be?

A. At a certain time of the year it would be approximately over two thousand cases of [3783] eggs.

Q. Do you remember any incident in which you gave any directions of what were to be done to

(Testimony of Abraham Moncharsh.)

eggs in respect to filling an Army order in June, 1941? A. No, sir.

Q. If there were an order for two thousand cases of eggs for the Army, in the normal course of your business where would the order be filled from?

A. Right at the packing plants where the eggs are being produced in the country.

Q. Do you remember on any occasion of any conversation in the presence of Mr. Pineda in which Mr. Goddard came to you and in the presence of Mr. Pineda told you to get in touch with Mr. Langworthy in Petaluma and to tell him to put up his eggs in the way that you were doing it on Townsend Street, and that you went to Petaluma to see him and to see that it was done right? Do you remember any such occasion?

A. No, never heard of any such discussion.

Q. Is there any similarity, Mr. Moncharsh, in the method of putting up eggs on Townsend Street and that followed in putting up eggs at a packing plant? A. Entirely different.

Q. How would eggs be handled in your packing plant, we will say, in Petaluma, in the year 1941? Would you tell the Court and Jury the general procedure followed in a packing plant?

A. To begin with, our trucks go out into the country daily and they pick up eggs from the various producers. Nearly each and every case of eggs is a case of [3784] eggs that we claim is farm packed, just the way the various chickens produce

(Testimony of Abraham Moncharsh.)

them—clean eggs, dirty eggs, large eggs, middle sized eggs—all sizes, all kinds and quality, various. These eggs would come into the packing plants—not only our packing plant, but to all other packing plants—they go to the egg candlers, they are candled, segregated, and they make exactly twenty-five different grades out of each and every case of eggs.

Q. In connection with candling currently-received eggs from those ranches, do I understand that a single case of rancher's eggs is candled by a single girl into twenty-five different boxes at certain times of the year?

A. Not exactly twenty-five different boxes, but twenty-five different grades. In other words, not every grade will go into a box. Some of the grades will go into merely fillers and then another girl goes around and collects these fillers.

Q. And that grading is done how by those candlers? How do they determine which particular receptacle the eggs go into?

A. They are trained. They have their cases set in certain places, and each bench is set up exactly alike, and they all know where each grade belongs.

Q. They candle the eggs before a light, do they not? A. Before a light.

Q. In connection with the number of cases of eggs graded an hour, what would the average number of cases graded an hour [3875] be for a crew of competent egg candlers?

A. Our girls at the present time——

(Testimony of Abraham Moncharsh.)

Q. I mean in 1941?

A. In 1941—they candled approximately three or three and a quarter cases per hour.

Q. Does that mean cases of the ultimate grade or is that the rancher's case?

A. That is the rancher's case.

Q. In other words, the case coming in?

A. That is right. The equivalent of thirty dozen to each case.

Q. In the candling operations at 224 Townsend Street what was the general type of candling operation that was carried on in the year 1941 at Townsend Street?

A. On Townsend Street or in any of our San Francisco plants, whether the plant was on Townsend Street or here on 17th and Missouri, generally they would candle—I would say ninety-eight percent or probably ninety-nine percent of the eggs that they would candle here are eggs that have already been candled and graded at one of the packing plants or eggs that we have purchased from other packing plants.

Q. What is the purpose of candling eggs in San Francisco?

A. Well, eggs are very perishable, and before we send them on to the grocery stores we have to make sure that there are no Inedible eggs and that they are of the proper grade and it complies in accordance with the California State laws.

Q. Did they also candle in relation to eggs that went out to departments which were dependent

(Testimony of Abraham Moncharsh.)

upon Veterinary Corps [3876] inspection and Department of Agriculture inspection?

A. Yes. Not always.

Q. Into how many grades would the candlers on Townsend Street normally grade eggs?

A. About five.

Q. In connection with the testimony of Mr. Pineda, did you ever go down to a pier, Pier 16, and help unload a quantity of eggs in the year 1941, I think it was?

A. Whether 1941 or any other year, I never helped unload cases of eggs off a truck on any dock.

Q. Have you ever gone-done to the pier at all in connection with the handling of any merchandise of yours during the period 1939, 1940, 1941 or 1942?

A. The only time that I can ever remember that I have ever been on a dock in connection with eggs was an incident that happened right after war was declared. The Quartermaster Market Center telephoned to us. It was late in the afternoon. I wouldn't remember what month it was or what day. They told us that they had an emergency ship to load and had got to have as many eggs as they possibly can and to see what we can do. We promised, or we agreed to give them all the cooperation we possibly could, give them as many eggs as we possibly could get together. We telephoned to our Petaluma plant and told them to unload all the eggs they have on the trucks and get them down to San Francisco. We telephoned to Santa Cruz

(Testimony of Abrahani Moncharsh.)

and told them the same things. We had to have all these trucks [3787] in on the dock by ten o'clock.

Q. In the morning or in the afternoon?

A. At night. And I was very curious, naturally, when trucks are out late at night, it was my duty to see whether they arrived and that they arrived in good condition.

Q. Did you go over there?

A. I went over to a pier—I don't remember the number—but I can say this: it was a dock near the Fisherman's Wharf, and every truck arrived in good condition. The merchandise was inspected on the dock before it was unloaded. They drew their own samples off the truck, took whatever cases they wanted, and merchandise was unloaded, and the last truck pulled out a little before twelve o'clock midnight.

Q. Mr. Moncharsh, other than that incident, have you any recollection of ever having been down at any other dock and participated in a delivery of eggs in which Mr. Andrade or Mr. Pineda were present?

A. I have never been on any other dock and the only time I have been on another dock was the Matson dock, Pier 30 or 32, to look at some of the shipments of eggs that we were making to Nye & Nissen in Honolulu. [3788]

Q. Was that a pier you ordinarily used for shipping to yourself to Honolulu? A. Yes.

Q. For your company?

A. For ourselves.

(Testimony of Abraham Moncharsh.)

Q. Did you in the year 1939 or 1940 in the presence of Mr. Pineda direct Mr. Goddard to prepare certain sample cases of eggs for the purpose of being presented to the Army Veterinary Corps inspectors? A. I never did.

Q. In the year 1941, in the winter, did you ever have a conversation with Mr. Goddard or Mr. Nix or Mr. Menges in which you told them that certain eggs should be brought out of the freezer or icebox and spread out on the floor so that they would dry because Colonel Hand was going to come in and inspect those eggs?

A. I never had any such conversation and I never gave such direction, because it would be foolish on my part.

Q. Why?

A. To have anybody take eggs out of an icebox and have they dry out so that they would deteriorate in quality. We put eggs in a cooler to protect the quality.

Q. In respect to the inspection of eggs, are eggs inspected in iceboxes as a normal thing by a Veterinary Corps inspector?

A. Colonel Hand and many other inspectors have inspected thousand of cases, in lots of 10,000 cases, right at the icehouse.

Q. Is there anything in the inspection of eggs by an inspector that would require you to take the eggs out of the freezer and [3789] have them dry out?

A. Eggs are never put into a freezer; a cooler.

(Testimony of Abraham Moncharsh.)

Q. I mean in a cold storage room, is there anything in the method of handling eggs for inspection that would require you to bring the eggs out and let them dry out before they were inspected?

A. No. It would be foolish to do that.

Q. Do you remember, Mr. Moncharsh, of ever participating in the year 1941, in which you directed a group of people to work at night and you helped in an operation where eggs were transferred from certain cases that bore an Army inspection label into other cases and you physically participated in the transfer of the eggs and the nailing up of the cases?

A. I never participated in any kind of a transfer of eggs.

Q. Were eggs transferred from one type case to another in your plant in the years 1939, 1940, 1941, 1942 and 1943? A. In emergency, yes.

Q. What? A. In emergency, yes.

Q. In connection with that particular incident, coming down at night and doing that, you have no recollection of any such incident ever having occurred? A. Absolutely not.

Q. And you know that you did not participated in any incident of that kind?

A. Absolutely not.

Q. The incident that I have just referred to was testified here as having occurred in November, 1941. Do you remember of any such incident in the year 1941, in the month of November? [3790]

A. With regard to a transfer?

(Testimony of Abraham Moncharsh.)

Q. Yes. A. None.

Q. Which you participated in nailing the boxes or selecting cases for the actual operation of transfer.

A. I have never participated in any such operation in my life.

Q. Do you remember participating in or having any conversation in relation to the inspection of eggs testified to by Mr. Pineda, the eggs were going to a CCC camp and they were to be prepared by having the flats and fillers sealed, you might say, with paper tape, and you gave instructions to have eggs for that order brought out in cases onto the floor of your plant in preparation for the presence of Colonel Hand, and directed that the eggs, after Colonel Hand had inspected them, were to be taken back into another part of the premises and other eggs substituted in their place?

A. I never gave any such direction and we never at any time had such an operation where Colonel Hand or any other Army man inspected eggs with strips.

Q. Do you remember what type of order, Mr. Moncharsh, the Army would request a sealing of flats and fillers on the eggs with paper tape?

A. They never required eggs sealed with tape.

Q. For the CCC camp?

A. For the CCC camp or any other place, or any other camp.

Q. Were there eggs prepared in your plant which were sealed up with paper tape?

(Testimony of Abraham Moncharsh.)

A. There were.

Q. Whom would that type of eggs go to?

A. These eggs, cases of eggs would go to the various veterans' hospitals. [3791]

Q. Who inspected for the Veterans hospitals?

A. The U. S. Department of Agriculture.

Q. Mr. Moncharsh, in the years 1939, 1940 and 1942, did you have in your possession a Department of Agriculture stamp which was kept in the office of Nye & Nissen, either upstairs or downstairs, when you were engaged in business at 324 Townsend Street? A. Never had such stamp.

Q. Did you ever have a Department of Agriculture stamp and actually, physically, yourself, stamp cases of eggs with that stamp?

A. I never had a Department of Agriculture stamp in my hand.

Q. Did you ever, while the Department of Agriculture men were there, stamp cases for them?

A. No, sir.

Q. Have you seen employees of Nye & Nissen stamp cases of eggs with Department of Agriculture stamps?

A. Whenever the stamp was given to them by one of the inspectors they stamped the cases; otherwise not.

Q. There was testimony introduced here that over a period of time, I think 1938, 1939, by Mr. Pineda, that there was in your office upstairs a stamp, a Department of Agriculture stamp, and that Mr. Goddard would go upstairs to the office

(Testimony of Abraham Moncharsh.)

of Nye & Nissen and get that stamp and take it downstairs.

A. That is not the truth. I had access to that safe at all times and I have never seen a stamp of any kind in the safe. Even our own stamps were never in the safe. [3792]

Q. Well, did you see it any other place?

A. No.

Q. Did you keep a stamp that had the words "U. S. Department of Agriculture Specials" written on it? A. No.

Q. In the possession of Nye & Nissen?

A. No.

Q. Did you ever at any time, Mr. Moncharsh, in the month of October, 1939, remove a quantity of 500 to 2000 cases of eggs with a Department of Agriculture stamp after an equivalent number of cases had been removed from the floor of your premises and put in some other part of your premises? A. No.

Q. Did you ever in the month of June, 1940, right before the Democratic National Convention, when President Roosevelt and Henry Wallace were running for office, participate in the stamping of 1000 cases of eggs with the Department of Agriculture stamp that was in the possession of your firm? A. Absolutely not.

Q. And as part of that transaction take another thousand cases of eggs which had already been stamped by the Department of Agriculture, and hide them somewhere in your premises?

(Testimony of Abraham Moncharsh.)

A. It would be, it would take a lot of room to hide a thousand cases of eggs. Absolutely not, never any such operation.

Q. Mr. Moncharsh, do you remember ever filling an order of eggs in which you participated in any way, in the amount of 2000 cases, in your plant on Townsend Street, regardless of who they were for, do you ever remember a single order of 2000 cases of eggs being filled in October of 1939?

A. I never participated [3793] in any such thing. We never filled an order for 2000 cases of eggs in San Francisco, out of the San Francisco branch. We could not.

Q. Did you ever fill an order for 2000 cases of eggs in June of 1940? A. No, sir.

Q. And have them inspected by the Department of Agriculture? A. No, sir.

Q. In your premises? A. No.

Q. Did you have the Army Veterinary Corps inspect in your premises on Townsend Street in the year 1939 and 1940 a single order of 2000 cases?

A. Absolutely not.

Q. Mr. Moncharsh, in the year 1943, do you know whether your company was engaged in the sale of eggs and butter to various ships along the waterfront that were operated by the War Shipping Administration? A. What?

Mr. Faulkner: May I have that read, your Honor?

(Question read.)

A. Yes.

(Testimony of Abraham Moncharsh.)

Q. Did the purchase order for those ships pass through your hands? A. No.

Q. What was the routine in your business as you observed it in respect to filling orders that came into your plant, a purchase order of a shipping company in the year 1943 and 1944?

A. In the morning when the mail was in the mail would be segregated, some of the mail would go to Mr. Jack Smith's desk and [3794] some of the mail would go on mine, and all of these purchase orders would go to Mr. Jack Smith and he would then distribute those to either Ruby Goddard or Mr. Henry Berman.

Q. In the year 1943, do you remember any transaction in relation to a ship called the William S. Clark? Do you remember anything in relation to the ship William S. Clark? A. I do.

Q. Did you see the purchase order issued by the American President Lines in relation to that vessel before the order was filled?

A. I never even knew that there was any such order filled.

Q. Did you give any direction to Mr. Goddard or Mr. Berman that your company would fill the order, in respect to filling the order?

A. No.

Q. When did you first hear of anything in relation to the William S. Clark?

A. In the early part of November, 1943.

Q. Who communicated with you at that time?

A. The purchasing agent of the American Presi-

(Testimony of Abraham Moncharsh.)

dent Lines, a man by the name of Al Fisk. Mr. Fisk called me on the telephone and told me that he received a telephone call from someone from the William S. Clark and that there is some complaint on the butter and the eggs.

Q. After you had that conversation with him what did you do?

A. I advised him that I was going to communicate, which I did, I telephoned, if I remember correctly, to our Los Angeles manager who at that time was Mr. Frank Gartenberg, and that I was going [3795] to ask him to go down to the boat and inspect the butter and the eggs and if there was anything wrong with them we will have them removed from the boat immediately. [3795-a]

Q. I show you Defendants' Exhibit AL, which is in evidence here, dated November 1, 1943, and ask you to look at that, please.

A. Yes, I dictated this teletype message.

Q. What was the direction that you sent on the teletype to Los Angeles in respect to the William S. Clark?

A. Would you like me to read it?

Q. Yes. Just leave out all those funny words and read the message relating to the William S. Clark?

A. "Re delivery to San Francisco to the steamer William S. Clark 45 cases of Fresh Medium eggs and 1,200 pounds of butter. This boat is at present at Berth 155 Wilmington. Have Frank examine the eggs and butter and find out what is wrong.

(Testimony of Abraham Monchar sh.)

Your can see Mr. Prevost in regard to making inspection. Make sure that the eggs and butter are ours. End"

Q. After sending that teletype to Los Angeles did you get a report from Los Angeles in relation to this message? A. Yes.

Q. Did you later after receiving that report get in touch with the American President Lines again?

A. I have.

Q. What was that conversation?

A. One morning—it was probably the next day or so—we received the butter back from the steamer Clark, and I looked at the butter. I immediately went to the telephone and called Mr. Fisk and asked him to come up to the plant. He came in. I said, [3796] "Now, take a look at this butter. Take any box you want and look at it. Taste it. Smell it."

He came in with some other gentleman—I don't remember his name—they both looked at the butter. Mr. Fisk said to me, "Sure, you smell vegetables, citrus fruit, oranges, apples, everything. This butter took on the flavor of everything they had in that ice box."

Q. Did you taste and smell that butter yourself?

A. Absolutely before I ever called them on the telephone.

Q. What was the rest of your conversation?

A. Mr. Fisk said to me, "Well, what can we do?"

I said, "I don't know what we can do with that."

So I asked him who was going to take the loss.

(Testimony of Abraham Moncharsh.)

I said, "You have a perfect right to charge it back to the American President Lines."

Q. What did you finally do?

A. We had to rework that butter.

Q. No, what did you finally do with the American President Lines?

A. We gave them credit for the butter.

Q. Were any eggs returned to your plant about the time you had a conversation about the butter?

A. No.

Q. You did replace the eggs on the William S. Clark? A. I have.

Q. Do you recall the time that was done?

A. Probably the following day, after I originally sent that [3797] teletype message.

Q. The one that you just read? A. Yes.

Q. Did you later receive a message in respect to the William S. Clark on the teletype from Los Angeles as shown in Defendants' Exhibit DG?

A. Yes, I stood by the teletype at the time this teletype message came over the teletype machine.

Q. Without reading everything on the message, what was the direction that you gave to Los Angeles as reflected by that teletype message?

A. I told them to work out the eggs, destroy the Inedibles——

Q. I mean what was the message you sent on the teletype?

A. Oh, I sent? You mean my reply?

Q. Your reply.

A. "You arrange recandling and only throw out

(Testimony of Abraham Moncharsh.)

whatever is absolutely necessary. We cannot fight with the American President Lines as they are good customers of ours, even though not our fault. Therefore see that the loss is as small as possible as we will have to stand for same. End."

And then I said, "Just a second. Return the good eggs to San Francisco. End."

Q. Mr. Moncharsh, in connection with that transaction did you receive from Mr. Gartenberg a report in writing in connection with the William S. Clark in the form as shown by U. S. Exhibit 137 with a typewritten signature "Frank" on it?

A. I received this letter. This letter—the first time I have ever seen this letter was right in this courtroom and not before.

Q. Did you, however, get a report from Mr. Gartenberg in relation to the method of handling that William S. Clark in addition to the teletype report that was just read?

A. Did I ever get it?

Q. Did you receive that report from Mr. Gartenberg, and by that report I mean Defendants' Exhibit DH?

A. Yes. This letter was received by me.

Q. You recognize the handwriting, the signature of Frank Gartenberg on that paper?

A. Yes.

Q. And that paper came from the files of Nye & Nissen?

A. I believe you took it out of the files yourself.

Q. Mr. Moncharsh, after the order had been

(Testimony of Abraham Moncharsh.)

replaced with the American President Lines, and after receiving that report, was that the extent of your knowledge of the butter and eggs that originally were on the William Clark?

A. Well, I couldn't——

Q. I mean, did that end the incident? Was there anything after that, after the eggs came back?

A. After the eggs came back the eggs went into —probably turned them over to Ruby, they were candled, and so on.

Q. I mean, did you have any more transactions with the American President Lines in relation to that transaction in respect to [3799] the William S. Clark, that you remember?

A. No, not any further discussions.

Q. In other words, that was the close of an incident where eggs were complained of by a customer and replaced, is that correct?

A. Sure. Nothing else happened.

Q. In the month of May—we will skip from November over to May, Mr. Moncharsh—was your company engaged in selling butter, eggs or cheese to boats operated by the War Shipping Administration in April or May of 1944? A. Yes.

Q. I show you here, Mr. Moncharsh, a purchase order from the De La Rama Steamship Company, which is U. S. Exhibit 34, and in the interests of time I will also show you an invoice of the firm of Nye & Nissen relating to the filling of an order on the steamship Henry White. Will you look at those, please? Just one moment, please.

(Testimony of Abraham Moncharsh.)

The purchase order is U. S. Exhibit 54. The invoice is U. S. Exhibit 53. Did you ever see the purchase order in respect to the filling of an order of that steamship company on your firm prior to the filling of that order?

A. I never saw this purchase order before and I never saw this invoice before this time, and I never heard of the Henry White before until I came into this court and heard the name mentioned. The only name that I can recognize here is the De La Rama Steamship Company.

Q. Did you select any of the merchandise, Mr. Moncharsh, that went to fill that order?

A. No. [3800]

Q. Did you give Mr. Henry Berman or Mr. Goddard any directions whatever as to the filling of that particular order?

A. Absolutely not. I never even knew we had filled an order like that.

Q. Did you give Mr. Goddard or Mr. Berman any directions as to the method of describing either the quality or the quantity of merchandise that went to that steamship company for that boat?

A. No.

Q. Did you see the invoice before it was sent to the shipping company?

A. No, I had never seen it before.

Q. Now, I show you a purchase order from the Williams Dimond Company, Agents, relating to the Cape Pillar, U. S. Exhibit 56, and I show you a typewritten invoice of the firm of Nye & Nissen,

(Testimony of Abraham Moncharsh.)

U. S. Exhibit 57, and I will ask you to look at the purchase order and the invoice. In respect to the purchase order, if I asked you the same questions in respect to that purchase order that I asked you in connection with the preceding one from the De La Rama Steamship Company, would your answers be the same?

A. They would be the same to both, the order and the invoice, with the exception that I know there is a Williams Dimond and Company.

Q. If you will look at the invoice on the letterhead or the billhead of Nye & Nissen I will ask you if you prepared that invoice?

A. I did not prepare—in fact, I never saw the invoice before. [3801]

Q. Was it prepared under a system in your plant where the person who prepared it——

A. Yes.

Q. ——was acting under your direction or suggestion as to the preparation of invoices?

A. I had nothing to do whatsoever with this invoice. I never gave any direction how to make it out, how to handle it, what to do with it in any way, shape or form.

Q. Did you ever have any conversations with Mr. Goldberd, Mr. Berman, or either of them, with respect to filling the order represented by that purchase order? A. No, sir.

Q. And you had no conversations with anyone in respect to the billing? A. No.

(Testimony of Abraham Moncharsh.)

Q. And you knew nothing about the billing until you came into this court, is that correct?

A. That is correct.

Q. I show you a purchase order from the General Steamship Corporation, Limited, U. S. Exhibit 63 for Identification, I will also show you U. S. Exhibit 61 and U. S. Exhibit 60. Each of those documents relates to the Josiah Royce. I will ask you if you have ever seen a purchase order relating to the Josiah Royce in connection with filling an order on that vessel at that time?

A. I never knew there was such an order in existence or that we have ever filled an order like that.

Q. You will notice in that particular series of exhibits there is a typewritten invoice on the firm stationery of Nye & Nissen. [3802] Did you prepare that invoice? A. No, sir.

Q. Did you discuss its preparation with anyone?

A. No, sir. This is the first time I had ever seen this invoice.

Q. Did you give any direction to anyone as to how it should be prepared? A. No, sir.

Q. Did you know anything concerning the contents of that invoice before it left the firm of Nye & Nissen? A. Absolutely not.

Q. Do you know whether the merchandise described in the invoice is correctly or incorrectly described? Do you know anything about this invoice at all?

(Testimony of Abraham Moncharsh.)

A. I don't know a thing about this. I never did, until just now.

Q. Now, in connection with the invoices that I have referred to up to now on your direct examination, there are somewhere in this record hand tags somewhat similar to hand tags 60, which is in the handwriting of Mr. Berman. Did you have anything to do with the preparation of any hand tags or hand invoices—by that I mean invoices in the handwriting of either Mr. Berman or Mr. Goddard—in relation to any of the ships we have referred to thus far?

A. I never had anything to do with the writing up of any invoices. That was not in my line of duty.

Q. Do those hand tags or the data contained on them or the invoices pass through your hands in the regular course of [3803] business of the firm of Nye & Nissen? A. No.

Q. I will show you a purchase order that is identified in this record as U. S. Exhibit No. 64, and an invoice relating to the John Muir, which is marked U. S. Exhibit No. 65, and I will ask you if you ever saw that purchase order prior to the filling of that order, which is represented in the invoice?

A. I have never seen this purchase order or this invoice prior to coming into this court, or until it was produced here in evidence.

Q. Did you give any directions to Mr. Berman or Mr. Goddard or any other person in relation to filling that order? A. No, sir.

(Testimony of Abraham Moncharsh.)

Q. Did you give any directions to any person as to the manner or method of filling out that invoice? A. No.

Q. Did your give any directions to anyone in relation to how to describe the merchandise reflected in that invoice? A. Absolutely not.

Q. Do you know anything about how that order was filled?

A. It must have been filled in the usual course of business.

Q. Do you know? Did you participate or have you any knowledge of how the order was filled?

A. No. I had nothing to do with this order in any shape or form.

Q. I show you, Mr. Moncharsh, a group of purchase orders from the Matson Navigation Company. One is U. S. Exhibit No. 71, relating to the Cape Breton. The next is Exhibit No. 73, [3804] relating to the SS. Philippa, a Matson Navigation Company purchase order. The next is a purchase order, No. 74, relating to the Hawaiian Shipper. That one is dated December 5, 1944. And another purchase order of the Hawaiian Shipper dated September 15, 1944, and then I will show you a hand tag on the stationery of Nye & Nissen, U. S. Exhibit No. 76, relating to the Cape Breton, U. S. Exhibit No. 77, relating to the SS. Philippa, U. S. Exhibit No. 78, relating to the voyage on 9/15/44, September 15, 1944, of the Hawaiian Shipper, and the next, a hand tag, on the stationery of your firm, relating to the Hawaiian Shipper, Exhibit No. 79. I ask

(Testimony of Abraham Moncharsh.)

you to look at each of those and I will ask you a series of questions as to them as a body. Look at the hand tags and look at the purchase orders of the Matson Navigation Company. There are two for the Hawaiian Shipper, one for the Cape Breton, and one for the steamship Phillipa. And there is a hand tag in relation to each purchase order? Have you looked at them?

A. The hand tags, yes. [3805]

Q. Did you look at the purchase orders?

A. Not yet.

Q. You will notice, Mr. Moncharsh, that these various purchase orders which I have shown you are dated in the month of May, which is the earliest date of any of them, and I will ask you how many years had the Matson Navigation Company been a customer of the firm of Nye & Nissen at the time they sent you that purchase order dated May 2, 1944—sent your firm that purchase order dated May 2, 1944? A. A great many years.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess.)

Mr. Faulkner: Q. Before the recess, Mr. Moncharsh, you had identified a series of purchase orders and a series of typewritten invoices and you stated that Matson Navigation Company had been a customer of the Nye & Nissen firm for many years. On the 2nd of May, or on any of the dates that these purchase orders reached your company,

(Testimony of Abraham Moncharsh.)

the firm of Nye & Nissen, did they pass through your hands? A. They did not.

Q. Did you give any directions to either Mr. Berman or Mr. Goddard in relation to preparing the merchandise for those orders?

A. I did not.

Q. Did you have anything whatever to do with the preparation of any invoices or hand tags prepared in connection with the delivery of merchandise to the three ships mentioned in those purchase orders, the Phillipa, Cape Breton and the Hawaiian [3806] Shipper?

A. I had nothing to do with them, whatsoever.

Q. In respect to the Hawaiian Shipper, there were two shipments, one in September and one in December. Did you have anything to do with either of those purchase orders? A. No.

Q. Or the preparation of the merchandise for that delivery? A. No.

Q. The hand tag for the delivery? A. No.

Q. Or the invoices which apparently were sent to the shipping company in connection with filling those orders? A. No.

Q. Did you see or observe the method in which either butter, eggs or cheese was selected by either Mr. Berman or Mr. Goddard or any other employee in the company in relation to any of the orders for any of the ships mentioned, starting with the William Clark, for a shipment which I have just mentioned?

(Testimony of Abraham Moncharsh.)

A. I did not prepare and I never saw and I never knew they were in existence.

Q. Now, Mr. Moncharsh, I show you a purchase order from the Agwilines, Inc., Agents, relating to a ship called the Cape Charles, and I show you two invoices on the stationery of Nye & Nissen, Inc., and I will ask you if you ever saw either purchase order or the invoices covering the shipments described in the invoices at any time prior to filling the order?

A. I never saw these invoices or these purchase orders prior to coming into this court.

Q. In the regular course of business of your company, did you [3807] in any manner participate in the selection of the merchandise or the preparation of the invoices? A. Absolutely not.

Q. There are in evidence in this case certain hand tags in relation to the Cape Charles. Did you have anything to do with preparing those hand tags, invoices or delivery slips in relation to that shipment, the Cape Charles? A. No.

Q. Did you select the merchandise that was to go to fill that order? A. I did not.

Q. The exhibit last referred to related to the Cape Charles and was U. S. Exhibit 94 and U. S. Exhibit 92.

I show you U. S. Exhibit No. 107, a purchase order, and hand tag, U. S. Exhibit 104, and an invoice, Exhibit 102, relating to the Francis Parker, and I will ask you to look at the purchase order, the invoices, and hand tag. A. Yes.

(Testimony of Abraham Moncharsh.)

Q. Did the purchase order relating to the Francis Parker pass through your hands prior to the execution of that order? A. It did not.

Q. Did you have anything to do with the selection of the merchandise evidenced by either the hand tag or the invoices? A. No.

Q. Did you ever seen the hand tag or the typewritten invoices at any time prior to the delivery of the merchandise referred to therein?

A. The first time I had ever seen these invoices or these purchase orders or hand tags, whatever you call them, is right here in this court. I have never seen them [3808] before.

Q. By the way, Mr. Moncharsh, in addition to other employees in your firm have you a head of a bookkeeping or auditing department in your firm?

A. Yes.

Q. What is the name of the man who had charge of it? A. At this time?

Q. Yes. A. Mr. J. Eichler.

Q. One of your bookkeepers and clerks?

A. Yes.

Q. In the office on Townsend Street?

A. Yes.

Q. Bookkeepers and clerks in the office on Seventeenth and Missouri? A. Yes.

Q. I show you U. S. Exhibit 139 and U. S. Exhibit 140; U. S. Exhibit 139 is a Moore-McCormack purchase order and U. S. Exhibit 140 is an invoice on the letterhead of Nye & Nissen, Inc. Did you ever seen that purchase order prior to the